

### REMARKS

Claims 1-16 are pending and claims 1-16 stand rejected. The Office action objected to the drawings under 37 CFR § 1.83(a) for failing to show every feature of the claimed invention specified in the claims. The Office action objected to claims 1 and 2 for formalities. The Office action rejected claims 1-16 under 35 USC § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Office action rejected claims 1-3, 6-12, 15, and 16 under 35 USC § 102(b) as being anticipated by Bue U.S. Pat. 3,391,667 (hereinafter "Bue"). The Office action further rejected claims 4 and 13 under 35 USC § 103(a) as being unpatentable over Bue in view of Banner U.S. Pat. 3,760,758 (hereinafter "Banner"). And The Office action further rejected claims 4 and 13 under 35 USC § 103(a) as being unpatentable over Bue in view of Guadin U.S. Pat. 4,261,278 (hereinafter "Guadin").

Independent claims 1 and 8 have been amended, dependent claims 2-4, 9 and 10 have been amended, and dependent claims 5-7 and 11-16 have been cancelled. Further claims 17-42 have been added, which include independent claims 17, 25, and 33. Applicant respectfully believes that the objections and rejections have been traversed in light of the following remarks or no longer apply in light of the above amendments.

#### Drawing objections

In regards to the objection to the drawings as failing to show every feature of the claimed invention specified in the claims under 37 CFR § 1.83(a), the Office action states that the manual adjustment of claims 4 and 13 is not shown in the drawings, the sides enabling the plate to hold scooped up water as described in claims 6 and 15 are not shown in the drawings, and that the 180 degrees displacement in one plane and 30 degrees of displacement in a perpendicular plane of claims 9 and 10 is not shown in the drawings.

AMENDMENTS TO THE DRAWINGS

Applicant respectfully requests that FIG. 2B be replaced with the attached replacement drawing for FIG. 2B. Applicant believes that the replacement FIG. 2B does not add new matter as discussed in the "REMARKS" section and "Drawing objections" subsection of this response in the discussion related to the objection that the 180 degrees displacement in one plane and 30 degrees of displacement in a perpendicular plane of claims 9 and 10 are not shown in the drawings.

Applicant respectfully suggests that manual adjustment as described in claims 4 and 13 is shown in the drawings. In particular, in the "BRIEF DESCRIPTION OF THE DRAWINGS" section on page 5, the description for FIG. 7 states:

FIG. 7 shows a plate which has no motor powered adjustable arms. The plate is moved from the inactive/up position to the active/down position *by manually changing the attachment points of arm "A3" and/or adjusting the length of arm A3.* (emphasis added).

This brief description for FIG. 7 explicitly describes manual adjustments as described in claims 4 and 13. Applicant has respectfully requested that this description for FIG. 7 be copied into the "DETAILED DESCRIPTION OF EMBODIMENTS" section in the specification amendments above. Thus, Applicant respectfully requests that this objection to claims 4 and 13 be withdrawn.

Applicant wants to memorialize the telephone conversation and agreement between Applicant, Steve Moore, and Examiner on September 8, 2004 regarding the support for side walls and a back wall in the FIG. 4 to overcome the objection to claims 6 and 15. In sum, Applicant respectfully suggests that the sides enabling the plate to hold scooped up water as described in claims 6 and 15 are shown in the drawings. In particular, in the "BRIEF DESCRIPTION OF THE DRAWINGS" section on page 4, the description for FIG. 4 states:

FIG. 4 is the same configuration as FIG. 2A except that the plate *has side and back walls to hold the water that is scooped up by the plate.* (emphasis added).

When comparing FIG. 2 to FIG. 4, there is distinctly shown the side and back walls for plate P. As stated, the side and back walls will "hold the water that is scooped up by the plate". Applicant has respectfully requested that this description for FIG. 4 be copied into the "DETAILED DESCRIPTION OF EMBODIMENTS" section in the specification amendments above. Thus, Applicant respectfully requests that this objection to claims 6 and 15 be withdrawn.

With regards to the objection that the 180 degrees displacement in one plane and 30 degrees of displacement in a perpendicular plane of claims 9 and 10 are not shown in the drawings, Applicant respectfully suggests that the requested modification of FIG. 2B, the amendments to claims 9 and 10, and the text of the specification clearly support amended claims 9 and 10. In particular, the first paragraph of specification in the "DETAILED DESCRIPTION OF THE INVENTION" section on page 5, states:

The preferred embodiment of the present invention is for boats that do not use an inboard-outboard or outboard engine and is depicted in FIG. 2A - FIG. 2D. The wake control plate "P" is connected to the transom "T" of the boat "B" by adjustable arms "A1", "A2" and "A3". Adjustable arms "A1" and "A2" are mounted rigidly on the Transom "T" and can only extend or contract vertically. "A1", "A2" and "A3" are connected to wake control plate "P" with a non-rigid joint "J"; where *a non-rigid joint is a connection that allows the arm 360 degrees of angular flexibility in one plane and up to approximately 20 degrees of angular flexibility in the direction perpendicular to that plane. (An example of a non-rigid joint that rotates 360 degrees in one direction and up to 20 in the other is the rubber gasket joint typically used on the bottom end of automobile shock absorbers).* Non-rigid joints give the wake control plate the flexibility to tilt about any axis as the length of the adjustable arms are independently adjusted, although the front two arms "A1" and "A2" are typically adjusted in concert. Adjustable arm "A3" may be attached to the transom of the boat "T" by means of non-rigid or preferably rigid joint "JJ". In the preferred embodiment, *the front edge of the plate, when in the active position, is about 5 cm below the transom and tilted about 20 degrees upward from the plane of the hull and, in the inactive position, the front of the plate is raised to be flush with the hull.* In the inactive position the plate may be tilted down, thus acting like a normal trim tab to raise the back of the boat. (for boats with outboard motors or IO drives, two separate plates on either side of the drive, as shown in FIG. 5, or a single plate with a cutout may be used.) (emphasis added).

The description clearly describes a non-rigid joint that is commonly known to those of ordinary skill in the art and that joint is depicted in the proposed replacement FIG. 2B. Applicant respectfully suggests that the replacement FIG. 2B does not add new matter but simply illustrates the well-known joint described in the above quotation. Further, Applicant has removed references to specific angular displacements in claims 9 and 10 to describe the wide

range of movement of non-rigid joints. However, the original claims 9 and 10 in conjunction with the above quotation and the non-rigid joint described in the above quotation, now illustrated in FIG. 2B, clearly supports the angular displacements objected to by the Office action. Thus, Applicant respectfully requests that this objection to claims 9 and 10 be withdrawn.

#### Claim objections

In regards to the objection to claims 1 and 2 for informalities, the Office action states that the word “the” should be removed from “the one or more wake control plates” in line 1 of claim 1. The amendments above to claim 1 remove the phrase “the one or more wake control plates” from the preamble, remove the “the”, and introduce “one or more wake control plates” without the “the” in the claim. Applicant believes that this satisfies the objection and respectfully requests that the objection be withdrawn.

Further, the Office action states that there is insufficient antecedent basis for “the watercraft” in line 2 of claim 1. The amendments above to claim 1 add “a” in front of “watercraft” in the preamble of claim 1 to provide antecedent basis for “the watercraft” in line 2. Thus, Applicant respectfully requests that the objection be withdrawn.

The Office action also states that there is insufficient antecedent basis for “the transom” in line 3 of claim 1. The amendments above to claim 1 remove “transom” to utilize “stern” and “stern” is introduced earlier in claim 1. Thus, Applicant respectfully requests that the objection be withdrawn.

With regards to claim 2, the Office action states that there is insufficient antecedent basis for “the desired position” in line 4. The amendments above to claim 2 remove “the desired position” so Applicant believes that the objection no longer applies. Thus, Applicant respectfully requests that the objection be withdrawn.

Claim rejections under 35 USC § 112

Claims 1-16 stand rejected under 35 USC § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In particular, the Office action states:

Claim 1 recites “the traditional trim tab position” in line 5. This is indefinite because it is unclear to the reader what the traditional position is.

Applicant respectfully suggests that “the traditional trim tab position” in line 5 is not indefinite for at least a couple reasons. First, a person of ordinary skill in the art would understand the meaning of “the traditional trim tab position”. In fact, Applicant considers the statement in the Office action within the objection paragraph that “... the traditional trim tab position is with the leading edge of the plate even with the bottom of the transom” to be true and obvious to one of ordinary skill in the art. Further, “traditional” or “normal” trim tabs and positions thereof are described in the “BACKGROUND OF THE INVENTION”, “BRIEF SUMMARY OF THE INVENTION”, “BRIEF DESCRIPTION OF THE DRAWINGS”, and “DETAILED DESCRIPTION OF THE INVENTION” sections of the application.

However, for reasons unrelated to the rejection, claim 1 has been amended to remove the phrase “the traditional trim tab position”. Thus, Applicant respectfully requests that the rejection be withdrawn.

The Office action also states:

Claims 2-7 depend upon claim 1 and are rejected for the same reason.

Applicant believes that rejections of the dependent claims 2-7 should no longer apply since claim 1 has been amended to remove the phrase “the traditional trim tab position”. Thus, Applicant respectfully requests that the rejections be withdrawn.

The Office action further states:

Claim 8 recites “one or more wake control plates: ... can be controlled independently or dependently from the other one or more wake control plates”.

No other one or more wake control plates have been recited. This renders the claim indefinite. Claims 9-16 depend from claim 8 and are rejected for the same reason.

Applicant amended claim 8 to remove “or dependently from the other one or more wake control plates” to make the meaning definite and the claim more concise. Applicant believes that the rejection no longer applies and respectfully requests that the rejections be withdrawn.

Further, Applicant believes that the rejections of 9-16 that are based upon “the other one or more wake control plates” in claim 8 no longer apply in light of the amendment. Thus, Applicant respectfully requests that the rejections be withdrawn.

In addition, the Office action states:

Claim 9 recites “the wake control plate” in line 2. It is unclear if this refers to the “one or more ... plates” or the “other one or more ... plates”. This renders the claim indefinite. Claim 10 has similar language.

Applicant amended claim 8 to remove “the other one or more wake control plates” and, thus, Applicant believes that the rejections for claims 9 and 10 no longer apply. Applicant respectfully requests that the rejections for claims 9 and 10 be withdrawn.

#### Claim rejections under 35 USC § 102

Claims 1-3, 6-12, 15, and 16 stand rejected under 35 USC § 102(b) as being anticipated by Bue. Applicants respectfully suggest that the rejections with respect to amended independent claims 1 and 8 are traversed in the following remarks.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single reference.<sup>1</sup> Furthermore, the identical invention must be shown in as complete detail as is contained in the claim.<sup>2</sup>

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<sup>1</sup> *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987).

<sup>2</sup> *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989).

In regards to the amended independent claims 1 and 8, the Office action fails to establish a prima facie case of anticipation by Bue because citations of Bue provided as support for the rejections fail to describe, suggest or teach “each and every element as set forth in the claim[s]”.

In particular, amended claim 1 states:

... one or more wake control plates, wherein the wake control plates are attached to a stern of the watercraft by the one or more length adjustable rods such that *the plate's front edge can be positioned below the stern and are inclined to an angle so as to scoop water upward to produce a negative lift to force the stern of the watercraft into a body of the water to increase a size of a wake created by the watercraft.*-(emphasis added).

Bue teaches stabilization of a motorized boat by “provid[ing] a proper angle for the craft either by raising or lowering the stern and may additionally be employed as a steering device” (“ABSTRACT OF THE DISCLOSURE”, column 1, lines 17-19; *see also* column 1, lines 55-64). Bue further provides a description of an improper angle, referring to a self-actuating trim tab in a prior application by Bue (Ser. 584,416, filed Oct. 5, 1966) (Specification, column 1, lines 28-36). It is obvious from these discussions that Bue does not teach “the plate's front edge can be positioned below the stern and are inclined to an angle so as to scoop water upward to produce a negative lift to force the stern of the watercraft into a body of the water to increase a size of a wake created by the watercraft”. As such, Bue does not teach or suggest, expressly or inherently, and, in fact, teaches away from the teachings of amended independent claim 1 as well as the new independent claims 17, 25, and 33. Thus, Applicant respectfully requests that the rejection of claim 1 be withdrawn and that claims 1, 17, 25, and 33 be allowed.

Further, claims 2-4, being dependent upon claim 1, incorporate the limitations of claim 1. Dependent claims 5-7 would also include the limitations of claim 1 but are cancelled for reasons other than the rejections. Thus, Bue does not teach all the limitations of dependent claims 2-4 so Applicant respectfully requests that these rejections be withdrawn and claims 2-4 be allowed.

With regards to claim 8, the Office action states that:

When the boat is riding bow-high the plates will be fully submersed. Each plate can be controlled independently of the other (column 3, lines 20-27).

In column 3, lines 20-27, Bue states:

When employed in pairs, the stabilizing units 1 of the present invention may also be used as a steering device providing both push button steering and a back-up safety system in the event of a defect or mishap in conventional steering equipment. For example, by lowering the starboard tab the craft in forward motion will turn starboard. By lowering the port tab, the craft in forward motion will turn port.

The amended claim 8, however, states:

...one or more wake control plates that are adapted to couple with the watercraft via the one or more connections with fixed lengths; can be positioned in a body of water by the one or more length adjustable rods; ***can be submersed under the stern of the watercraft and can be controlled independently to produce a negative lift to force the stern of the watercraft into a body of the water to increase a size of a wake created by the watercraft.*** (emphasis added).

In this quotation, Bue utilizes his trim tabs to steer the boat but not “to produce a negative lift to force the stern of the watercraft into a body of the water to increase a size of a wake created by the watercraft” as taught in amended claim 8. Also, Applicant believes that the citation for Bue does not teach or suggest that the trim tabs of Bue will be fully submersed. Nor does Applicant believe that full submersion is inherent to the situation(s) discussed in Bue as cited by the Office action. Thus, Bue does not teach all the limitations of amended claim 8. Applicant respectfully requests that is rejection be withdrawn and that amended claim 8 be allowed.

Further, claims 9-10, being dependent upon claim 8, incorporate the limitations of claim 8. Dependent claims 11-16 would also include the limitations of claim 8 but are cancelled for reasons other than the rejections. Thus, Bue does not teach all the limitations of dependent claims 9-10 so Applicant respectfully requests that these rejections be withdrawn and claims 9-10 be allowed.

Claim rejections under 35 USC § 103(a)

Claims 4 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bue in view of Banner and claims 5 and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bue in view of Gaudin. Claims 5, 13, and 14 were cancelled for reasons unrelated to these rejections.

To establish a prima facie case of obviousness, three basic criteria must be met.<sup>3</sup> First, there must be a suggestion or motivation to modify or combine the references.<sup>4</sup> Second, there must be a reasonable expectation of success in the modification or combination.<sup>5</sup> Finally, the modification or combination must teach or suggest all of Applicants' claim limitations.<sup>6</sup>

The rejections rely on Bue to teach the limitations of claims 1 and 8. However, as argued above, Bue describes an invention to stabilize the boat by "provid[ing] a proper planning angle" and diverges from that use to provide an emergency steering system. Bue does not teach use of a wake control plate "to scoop water upward to produce a negative lift to force the stern of the watercraft into a body of the water to increase a size of a wake created by the watercraft". As such, Bue does not teach or suggest, expressly or inherently, and, in fact, teaches away from the teachings of amended independent claims 1 and 8. Applicant respectfully requests that the rejection of claim 4 be withdrawn and claim 4 be allowed.

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<sup>3</sup> Manual of Patent Examining Procedure §2142.

<sup>4</sup> *In re Vaeck*, 947 F.2d 488, 493, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991).

<sup>5</sup> *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097, 231 USPQ 375, 379 (Fed. Cir. 1986).


<sup>6</sup> *In re Royka*, 490 F.2d 981, 985, 180 USPQ 580, 583 (CCPA 1974).

CONCLUSION

In the present response, Applicant has amended the specification, amended FIG. 2B in response to drawing objections, amended claims 1, 2 and 8 in response claim objections, responded to the Office actions claim rejections under 35 USC §§ 112, 102, and 103 and added new claims 17-42. Accordingly, Applicant believes that this response constitutes a complete response to each of the issues raised in the office action. In light of the amendments made herein and the accompanying remarks, Applicant believes that the pending claims are in condition for allowance. Accordingly, Applicant would request that the objections and rejections be withdrawn, pending claims be allowed, and application advance toward issuance. If the Examiner has any questions, comments, or suggestions, the undersigned attorney would welcome and encourage a telephone conference at (512) 288-6635.

Respectfully submitted,

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